

**** E-filed January 18, 2012 ****

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HARMIN INVESTMENTS, LP #109,

No. C11-06141 HRL

Plaintiff,

**ORDER THAT CASE BE
REASSIGNED TO A DISTRICT
COURT JUDGE**

v.

ESSI MANSOORI; HEDIEH MANSOORI;
and DOES 1-20, inclusive,

REPORT AND RECOMMENDATION

Defendants.

[Re: Docket No. 5]

INTRODUCTION

On December 6, 2011, third-party claimant Miles Dawson, proceeding pro se, removed this case from Santa Clara County Superior Court. Dkt. No. 1 ("Notice of Removal"). Plaintiff Harmin Investments ("Harmin") moves to remand. Dkt. No. 5. Neither Dawson nor the named defendants have opposed the motion. Because none of the parties have consented to the undersigned's jurisdiction, this court is unable to provide the dispositive relief sought. For the reasons stated below, the undersigned **ORDERS** that this case be reassigned to a district judge, and **RECOMMENDS** that the plaintiff's motion to remand be **VACATED** and the case summarily remanded.

DISCUSSION

Harmin filed this unlawful detainer action against defendants Essi and Hedieh Mansoori on August 23, 2011 in Santa Clara County Superior Court. Notice of Removal, p. 3 ("Complaint").

1 According to the complaint, Harmin acquired the subject property, a San Jose residence, through a
 2 foreclosure trustee's sale on August 8, 2011, in accordance with California Civil Code section 2924.
 3 Complaint at ¶ 6. On August 8, Bay Valley served defendants with a three-day Notice to Quit. Id. at
 4 ¶ 8. Defendants did not respond to the Notice, nor did they vacate the property. Id. at ¶ 9.

5 Removal to federal court is proper where the federal court would have had original subject
 6 matter jurisdiction over the complaint. 28 U.S.C. § 1441. Removal jurisdiction can be based on
 7 diversity of citizenship or on the existence of a federal question. Caterpillar Inc. v. Williams, 482
 8 U.S. 386, 392 (1987). Ordinarily, "federal jurisdiction exists only when a federal question is
 9 presented on the face of the plaintiff's properly pleaded complaint." Id. Thus, "the plaintiff [is] the
 10 master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law." Id.
 11 If, after a court's prompt review of a notice of removal, "it clearly appears on the face of the notice
 12 and any exhibits annexed thereto that removal should not be permitted, the court shall make an order
 13 for summary remand." 28 U.S.C. § 1446(c)(4) (emphasis added). These removal statutes are strictly
 14 construed against removal and place the burden on the defendant to demonstrate that removal was
 15 proper. Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009) (citing Gaus v.
 16 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)).

17 Here, Dawson asserts that removal is proper based on federal question jurisdiction. See
 18 Notice of Removal ¶ 5. Federal courts have original jurisdiction over civil actions "arising under the
 19 Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. A claim "arises under"
 20 federal law if, based on the "well-pleaded complaint rule," the plaintiff alleges a federal cause of
 21 action. Vaden v. Discovery Bank, 129 S. Ct. 1262, 1272 (2009). Alternatively, the complaint may
 22 establish that the plaintiff's right to relief "necessarily depends on resolution of a substantial
 23 question of federal law." Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage
 24 Leasehold & Easement, 524 F.3d 1090, 1100 (9th Cir. 2008) (quoting Franchise Tax Bd. v. Constr.
 25 Laborers Vacation Trust, 463 U.S. 1, 27–28 (1983). Defenses and counterclaims asserting a federal
 26 question do not satisfy this requirement. Discovery Bank, 129 S. Ct. at 1272.

27 Dawson asserts that Harmin "actually filed a [f]ederal [q]uestion in state court." Notice of
 28 Removal ¶ 5. However, Harmin's complaint alleges only a cause of action for unlawful detainer

1 under California law; it does not allege any federal claims whatsoever. See Complaint. Moreover,
2 resolving Harmin's unlawful detainer claim does not depend on resolution of any substantial issues
3 of federal law. Accordingly, Dawson has failed to show that this action arises under federal law.

4 Neither is there diversity jurisdiction over this action. Federal subject-matter jurisdiction
5 based on diversity requires complete diversity of citizenship and an amount in controversy in excess
6 of \$75,000. 28 U.S.C. § 1332(a).¹ In this matter, all parties, including Dawson, are citizens of
7 California, and plaintiff's complaint expressly states that the amount in controversy is less than
8 \$10,000. Complaint p. 1. Therefore, there is no basis for this court to exercise jurisdiction based
9 either upon a federal question or diversity.

10 Finally, the court notes that Dawson may not even be a party to this action. He states in the
11 Notice of Removal that he sought to intervene in the state court action, but has provided no evidence
12 that would allow this court to conclude that he has intervened and is capable of removing this
13 action. See Notice of Removal ¶ 3. 28 U.S.C. § 1441 permits the *defendant* to remove an action to
14 federal court. However, because this court concludes that there is no basis for it to exercise
15 jurisdiction based either upon a federal question or diversity, it declines to analyze whether Dawson
16 is a defendant who may properly remove this action.

17 CONCLUSION

18 Because the parties have yet to consent to the undersigned's jurisdiction, this court ORDERS
19 the Clerk of the Court to reassign this case to a District Court judge. The undersigned further
20 RECOMMENDS that the newly assigned judge summarily remand the case to Santa Clara County
21 Superior Court. Pursuant to Federal Rule of Civil Procedure 72(b), any party may serve and file
22 objections to this Report and Recommendation within fourteen days after being served.

23
24 ¹ Additionally, the "forum defendant rule" ordinarily imposes a limitation on actions
25 removed pursuant to diversity jurisdiction: "such action[s] shall be removable only if none of the
26 parties in interest properly joined and served as defendants is a citizen of the State in which such
27 action is brought." 28 U.S.C. § 1441(b); see Spencer v. U.S. Dist. Ct. for the Northern Dist. of Cal.,
28 393 F.3d 867, 870 (9th Cir. 2004). However, the Ninth Circuit has held this rule to be procedural
and a waivable defect in the removal process, and a court acting *sua sponte* may not base its
decision to remand solely upon such a defect. Lively v. Wild Oats Markets, Inc., 456 F.3d 933, 935-
36 (9th Cir. 2006).

IT IS SO ORDERED.

Dated: January 18, 2012



HOWARD R. LEYD
UNITED STATES MAGISTRATE JUDGE

C11-06141 HRL Notice will be electronically mailed to:

Kirkman Hoffman kirk@kirkhoffman.com

Notice will be mailed to:

Miles Dawson
3328 Moulin Lane
San Jose, CA 95135

Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.